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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENISE and KENNETH COOK,)	
)	
Plaintiffs,)	Case No. 10-cv-3121-PA
)	
vs.)	MEMOARADUM OF LAW IN
)	SUPPORT OF MOTION FOR
)	SUMMARY JUDGMENT OF
BENEFICIAL OREGON, INC. and)	DEFENDANTS SHAPIRO &
SHAPIO & SUTHERLAND, LLC)	SUTHERLAND, LLC
)	
)	
Defendants.)	

I. INTRODUCTION

Defendant Shapiro & Sutherland, LLC (“Shapiro & Sutherland”) offer this memorandum of law in support of their motion for summary judgment as to all of Plaintiff’s Claims.

Defendant Shapiro & Sutherland, LLC was not named as party in the Plaintiffs’ original complaint (Dkt/#1). In response to an Order from this Court, the Plaintiffs filed the subject First Amended Complaint for Damages and Injunctive Relief (Dkt #19, 20). The First Amended Complaint names Shapiro & Sutherland, LLC as Defendant for the first time. No summons has

1 issued by this court or has any summons been served upon Defendant Shapiro & Sutherland.
 2 Only an incomplete copy of the complaint, lacking pages 5 and 8, has been mailed to Shapiro &
 3 Sutherland's registered agent. The only allegations in the First Amended Complaint against
 4 Shapiro & Sutherland are allegations that Shapiro & Sutherland as Foreclosure Trustee failed to
 5 comply with the requirements of ORS 86.755 when postponing Trustee's Sale twice and
 6 conducting the Trustee's Sale on January 5, 2011. The allegations are false, as all statutory
 7 requirements were complied with by the foreclosure Trustee in the non-judicial foreclosure of
 8 the subject deed of trust.
 9

10 II. SUMMARY OF ARGUMENT

11 Summary judgment is appropriate under *Fed.R.Civ. P. 56* if there are no issue of material
 12 fact and the moving party is entitled to judgment as a matter of law. In this case, defendant
 13 Shapiro & Sutherland, LLC is entitled to judgment as a matter of Law.
 14

15 Kelly Sutherland, Shapiro & Sutherland, ("Shapiro") was appointed Successor Trustee by
 16 Beneficial Oregon, Inc. on July 20, 2010 and the Appointment of Successor Trustee recorded
 17 July 27, 2010. *Shapiro Decl.*, ¶4. A Notice of Default was prepared and recorded establishing
 18 the Trustee's Sale date as December 2, 2010. *Id.*, ¶5. As set forth in declaration of Kelly
 19 Sutherland, all the required steps in the non-judicial foreclosure proceeding timely completed,
 20 The Danger Notice was served by first class and certified mail on July 28, 2010 and the Notice
 21 of Sale was served by first class and certified mail on July 28, 2010 *Id.*, ¶ 6. The required service
 22 upon an occupant of subject property was timely made by the initial posting on July 31, 2010.
 23 Mr. Keneth Cook was personally served on August 3, 2010. *Id.*, ¶ 7.
 24

25 The Trustee's Sale scheduled for December 2, 2010 was postponed by public
 26
 27

1 proclamation to December 17, 2011. . The Trustee's sale scheduled for December 17,
 2 2010 was postponed by public proclamation to January 5, 2011. *Id.*, ¶ 8. Each
 3 postponement by public proclamation was personally done by Mr. Richard Magatelli, as
 4 agent for the Successor Trustee. *Magatelli Decl.*, ¶ 1 & 2.

5 On January 5, 2011, Magatelli appeared as agent for the Successor Trustee and
 6 personally conducted the subject Trustee's Sale. Beneficial Oregon, Inc. was the
 7 successful bidder with a credit bid of \$146,015.99. *Id.*, ¶ 3. The Trustee's Deed conveying
 8 the property to Beneficial Oregon, Inc. was recorded January 12, 2011. *Shapiro*
 9 *Decl.*, ¶ 9.

10 The plaintiffs have failed to raise any issue of material fact regarding any actions
 11 taken by Defendant Shapiro & Sutherland with respect to the non-judicial foreclosure.
 12 The affidavits of record clearly demonstrate that all the statutory steps were complied
 13 with. The Magatelli's declaration and its supporting documentation clearly establish that
 14 the two postponements of the Trustee's sale were properly announced by public
 15 proclamation as required under ORS 85.755(2). Magatelli's declaration further
 16 establishes that the Trustee's sale was duly conducted on January 5, 2011. There is no
 17 evidence provided by the plaintiff at creates an issue of material fact.

21 III. CONCLUSION

22 Defendant's motion for summary judgment should be allowed.

23 Dated this 8th day of March, 2011.

24 /s/ Kelly D. Sutherland
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 26 Attorneys for Shapiro & Sutherland, LLC
 27

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